TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 481.

ADDISON JOHNSON, AGENT AND WARDEN OF THE STATE PRISON OF THE STATE OF NEW YORK AT SING SING, N. Y., APPELLANT,

vs.

CHARLES C. BROWNE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 2, 1906.

(20446.)

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1 *To the Circuit Court of the United States for the Southern District of New York.*

The petition of Charles C. Browne respectfully shows:

I. That petitioner is now in the custody of Addison Johnson, agent and warden of the State prison of the State of New York at Sing Sing, in the State of New York, and is there incarcerated and detained against his will by the said agent and warden.

II. The sole claim or authority by virtue of which the said Addison Johnson, agent and warden as aforesaid, so restrains and detains petitioner is by virtue of a certain commitment and mandate, in writing, a copy of which is hereto annexed marked "A."

III. That the said commitment was issued pursuant to an order of this court made and entered at a stated term thereof held at the post-office building in the city of New York on the 19th day of January, 1906, a copy of which said order is hereto annexed marked "B."

IV. That heretofore and on the 20th day of February, 1904, your petitioner was tried and convicted in the said Circuit Court of the crime of conspiring to defraud the United States of duties on imports. That the said conviction was thereafter duly affirmed by the Circuit Court of Appeals for the Second Circuit.

V. That thereafter, on a mandate from the said Circuit Court of Appeals, an order was entered in this court making the judgment of the said Circuit Court of Appeals the judgment of this court. That thereupon a mandate was issued to William Henkel, United States marshal, for execution.

2 VI. That subsequently extradition proceedings for the surrender of your petitioner were instituted by the Government of the United States and demand made upon the authorities of the Dominion of Canada for the delivery of the body of the said Charles C. Browne to the duly appointed agent of the United States in that behalf upon the said charge of conspiracy, for which your petitioner had been so as aforesaid convicted.

VII. That thereafter the surrender of the said Charles C. Browne upon the said charge of conspiracy, for which he had been so convicted as aforesaid, was on or about the 12th day of May, 1906, denied by the government of the Dominion of Canada.

VIII. That subsequently extradition proceedings were again instituted by the Federal Government for the surrender of the said Charles C. Browne upon a charge of knowingly admitting the entry of goods, wares, and merchandise upon the payment of less than the amount due thereon, a violation of section 5444 of the Revised Statutes of the United States, upon which charge an indictment had been filed in this court on the 2nd day of April, 1903.

IX. That subsequently and on the 25th day of July, 1906, the surrender of the said Charles C. Browne upon the charge last above mentioned was duly granted by the said government of the Dominion of Canada, and the body of the said Charles C. Browne was delivered to one William Flynn, the duly appointed agent of the United States of America in that behalf.

X. That thereafter the said William Flynn, as such agent as afore-

said, brought the body of the said Charles C. Browne into the State of New York, when, in violation of the rights of petitioner and in violation of the treaty obligations between the United States of America and Great Britain, the said William Henkel, such
3 marshal as aforesaid, acting under the warrant and mandate so issued by this court upon the conviction aforesaid, caused your petitioner to be surrendered and turned over to the said Addison Johnson, such agent and warden as aforesaid, for the purpose of executing the sentence of imprisonment heretofore imposed upon him.

XI. That the said imprisonment and detention is in violation of Article III and Article VII of the treaty between the United States of America and Her Britannic Majesty of July 12th, 1889, which said articles are as follows—that is to say:

"Article III. No person surrendered by or to either of the high contracting parties shall be triable or be tried for any crime or offence, committed prior to his extradition, other than the offence for which he was surrendered until he shall have had an opportunity of returning to the country from which he was surrendered."

"Article VII. The provisions of the said tenth article and of this convention shall apply to persons convicted of the crimes therein respectively named and specified whose sentence therefor shall not have been executed."

As is hereinabove stated, the offence for which your petitioner has been committed to the said State prison is not the effence for the commission of which his surrender was granted, but, on the contrary, it appears that his surrender for the said offence was directly refused.

XII. That your petitioner has been advised by his counsel and verily believes that for the reasons above stated his commitment to the custody of the said agent and warden as aforesaid was without legal right, authority, or jurisdiction of any kind and was utterly void and ineffectual and in violation of law and in violation of the treaty obligations aforesaid.

4 Wherefore your petitioner prays a writ of habeas corpus may be issued directed to the said Addison Johnson, esq., such agent and warden as aforesaid, or to any of his deputies or assistants, requiring him or them to bring and have your petitioner before this court at a time to be by it determined, together with the true cause of his detention, to the end that public inquiry may be had in the premises and that this court may proceed in a summary way and determine the facts of the case in that regard and the legality of the imprisonment of the said Charles C. Browne, and thereupon to dispose of the said petition as law and justice require.

And your petitioner will ever pray.

Dated at the city of New York, this 30th day of July, 1906.

CHAS. C. BROWNE.

STATE OF NEW YORK,
County of Westchester.

Charles C. Browne, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his

own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

CHAS. C. BROWNE.

Sworn to before me this 30th day of July, 1906.

[SEAL.] D. J. HICKEY,
Notary Public, Westchester Co., N. Y.

5 "A."

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the United States court rooms, in the city of New York, on Wednesday, the 9th day of March, in the year of our Lord one thousand nine hundred and four.

Present: The honorable Edward B. Thomas, judge.

THE UNITED STATES *vs.* CHARLES C. BROWNE, IMPLEADED. } Sec. 5440, U. S. Rev. Stat., as am. by act of May 17, 1897, I Supp. 264. Conspiracy.

On motion of the United States attorney, ordered sentence.

The court thereupon proceeds to pass judgment and sentence the prisoner, Charles C. Browne, to be imprisoned for a period of two years.

Sentence to be executed at the Sing Sing prison.

BY THE COURT.

Attest:
JOHN A. SHIELDS, *Clerk.*

Defendant, Charles C. Browne, discharged on bail to amount on appeal.

March 9, 1904.

JOHN A. SHIELDS, *Clerk.*

6 "B."

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the United States court rooms, in the city of New York, on the nineteenth day of January, in the year of our Lord one thousand nine hundred and six.

Before the Hon. Edward B. Thomas, judge.

THE UNITED STATES OF AMERICA *vs.* CHARLES C. BROWNE. }

This cause having been heretofore tried and judgment of conviction having been rendered by this court on the 9th day of March, 1904, sentencing the defendant, Charles C. Browne, to two (2) years

imprisonment at hard labor, sentence to be executed at Sing Sing prison,

And the defendant having thereafter, by writ of error, obtained the record and proceedings therein, with all things concerning the same, to be removed to the United States Circuit Court of Appeals for the Second Circuit, for review of the aforesaid judgment and proceedings, and the said United States Circuit Court of Appeals having transmitted its mandate, bearing date December 19th, 1905, by which it appears that the said cause at the October term for 1905 came on to be heard before the said Circuit Court of Appeals, and was argued by counsel, and on consideration thereof it was ordered and adjudged by the said United States Circuit Court of Appeals that the aforesaid judgment of the said Circuit Court in this cause be affirmed.

Now on reading and filing said mandate, and on motion of
7 Henry L. Burnett, United States attorney for the Southern District of New York, it is

Ordered, adjudged, and decreed that the said judgment of the said United States Circuit Court of Appeals for the Second Circuit be, and the same is hereby, made the judgment of this court, and that the same be executed and enforced according to the tenor thereof aforesaid.

EDWARD B. THOMAS, *U. S. Judge.*

(Endorsed:) U. S. Circuit Court. In the matter of Charles C. Browne. Petition. Black, Olcott, Gruber & Bonynge, attorneys for petitioner, 170 Broadway, New York City. Exhibited to me 7/30/06, C. M. H., D. J. U. S. Circuit Court, Southern District New York. Filed Jul. 30, 1906. John A. Shield, clerk.

8 STATE OF NEW YORK,
County of New York, City of New York, ss:

Roscoe C. Peck, being duly sworn, deposes and says: That he is over the age of 21 years. That on the 31st day of July, 1906, at the State prison of the State of New York, in the town of Ossining, State of New York, owing to the absence of Addison Johnson, agent and warden of said prison, he served the writ of habeas corpus hereto annexed on James Connaughton, principal keeper and person in charge of said prison, by handing to and leaving with said Connaughton a true copy of said writ and at the same time exhibiting to him the original writ hereto annexed.

ROSCOE C. PECK.

Subscribed and sworn to before me this 1st day of August, 1906.

[SEAL.] EDW. M. MCINNES,
Notary Public, N. Y. Co. No. 81.

9 *The President of the United States, to Addison Johnson, agent and warden of the State prison of the State of New York, greeting:*

We command you that you have the body of Charles C. Browne, by you imprisoned and detained in this State, together with the time and

cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, on the 7th of August, 1906, at 10.30 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Charles C. Browne, and have you then and there this writ.

Witness Hon. Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 30th day of July, in the year one thousand nine hundred and six.

[SEAL.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

The foregoing writ is hereby allowed.

C. M. HOUGH,
U. S. Dist. Judge, So. Dist. N. Y.

(Endorsed:) U. S. Circuit Court. In the matter of Charles C. Browne. Writ of habeas corpus. Black, Olcott, Gruber & Bonynge, attorneys for petitioner, &c., 170 Broadway, New York City. Let the petitioner be discharged from his present custody. Opinion filed Aug. 14, 1906. C. M. Hough, D. J. U. S. Circuit Court, Southern District New York. Filed Aug. 14, 1906. John A. Shields, clerk.

10 [State of New York. Sing Sing prison. Addison Johnson, agent and warden.]

OSSINING, *August 7th, 1906.*

To the President of the United States of America:

I, the undersigned, agent and warden of Sing Sing prison, at Ossining, N. Y., do hereby certify and make return to the annexed writ of habeas corpus, issued out of the United States District Court on the 30th day of July, 1906; and for a return thereof I respectfully set forth and allege:

1st. That I received the said writ of habeas corpus on the first day of August, 1906, and at the time of the service thereof there was, and is now, in my custody the body of one Charles C. Browne, whom I believe to be the prisoner named therein.

2nd. I also set forth and certify that the said Charles C. Browne is in my custody and imprisoned and detained by me at the said Sing Sing prison by virtue of the final judgment of the Circuit Court of the United States of America for the Southern District of New York, duly rendered against the said Charles C. Browne on the 9th day of March, 1904, on conviction of a felony, copy of said judgment being hereto annexed and made part of this return; and in compliance with said writ of habeas corpus I now produce and present to this court the body of said Charles C. Browne.

ADDISON JOHNSON,
Agent and Warden, Sing Sing Prison.

11 At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the United States court rooms in the city of New York on the nineteenth day of January, in the year of our Lord one thousand nine hundred and six.

Present, the Hon. Edward B. Thomas, judge.

THE UNITED STATES OF AMERICA
vs.
CHARLES C. BROWNE.

This cause having been heretofore tried and judgment of conviction having been rendered by this court on the 9th day of March, 1904, sentencing the defendant, Charles C. Browne, to two (2) years imprisonment at hard labor, sentence to be executed at Sing Sing prison.

And the defendant having thereafter, by writ of error, obtained the record and proceedings therein, with all things concerning the same, to be removed to the United States Circuit Court of Appeals for the Second Circuit for review of the aforesaid judgment and proceedings, and the said United States Circuit Court of Appeals having transmitted its mandate bearing date December 19th, 1905, by which it appears that the said cause at the October term for 1905 came on to be heard before the said Circuit Court of Appeals, and was argued by counsel, and on consideration thereof it was ordered and adjudged by the said United States Circuit Court of Appeals that the aforesaid judgment of the said Circuit Court in this cause be affirmed.

Now, on reading and filing said mandate, and on motion of Henry L. Burnett, United States attorney for the Southern District of New York, it is

12 Ordered, adjudged, and decreed that the said judgment of the said United States Circuit Court of Appeals for the Second Circuit be, and the same is hereby, made the judgment of this court, and that the same be executed and enforced according to the tenor thereof aforesaid.

EDWARD B. THOMAS,
U. S. Judge.

(Endorsed:) United States Circuit Court, Southern District of New York. The United States of America *vs.* Charles C. Browne. Order on mandate. Henry L. Burnett, U. S. attorney, attorney for United States, P. O. building, N. Y. City. U. S. Circuit Court, Southern District New York. Filed Jan. 19, 1906. John A. Shields, clerk.

A copy.
[SEAL.]

JOHN A. SHIELDS, *Clerk.*

13 No. 3953. U. S. Circuit Court.

THE UNITED STATES *vs.* CHARLES C. BROWNE.	Charged with and convicted of conspiracy, sec. 5440 U. S. R. S., as amended by act of May 17, 1897, I Supp. 264, and sentenced to be imprisoned for a term of two (2) years, sentence to be executed at the Sing Sing prison.

The above-named defendant is hereby delivered by me into the custody of the warden of Sing Sing prison, in pursuance of the statutes in such cases made and provided.

July 26th, 1906.

WILLIAM HENKEL,
United States Marshal for the Southern District of New York.

Officer Blake.

14 At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States court rooms in the city of New York, on Wednesday, the 9th day of March, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Edward B. Thomas, judge.

THE UNITED STATES *vs.* CHARLES C. BROWNE, IMPLEADAD.	Sec. 5440, U. S. Rev. Stat., as amended by act of May 17, 1897, I Supp. 264. Conspiracy.

On motion of the United States attorney, ordered sentence.

The court thereupon proceeds to pass judgment and sentence the prisoner, Charles C. Browne, to be imprisoned for a period of two years.

Sentence to be executed at the Sing Sing prison.

BY THE COURT.

Attest:
JOHN A. SHIELDS, *Clerk.*

Defendant Charles C. Browne discharged on bail to amount , on appeal, March 9th, 1904.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) U. S. Circuit Court, Southern District New York. Filed Aug. 14, 1906. John A. Shields, clerk.

15 Circuit Court of the United States, Southern District of New York.

In the matter of Charles C. Browne.

On habeas corpus.

Henry L. Stimson, esq., district attorney (W. Wickham Smith, esq., special district attorney), for the United States.

Messrs. Black, Olcott, Gruber & Bonynge (Messrs. Olcott and McManus), for the relator.

HOUGH, J.

In the year 1903, several indictments were found by the grand jury of this district against the relator.

In one he was charged with conspiring to defraud the United States of duties upon imports, and in another with procuring the admission of goods into the United States in violation of Revised Statutes, section 5444.

Upon the conspiracy charge Browne was duly convicted and sentenced to a term in the prison at Sing Sing. This conviction was affirmed upon appeal, and an application for certiorari to the Supreme Court refused.

Upon the charge under section 5444 he has never been tried.

16 Browne having been released on bail pending appeal, fled to Canada after the affirmance of his conviction. Thereupon the United States demanded his extradition as a convict, pursuant to our extradition convention of 1889 with the Government of Great Britain. This demand was refused.

Immediately a new demand was made, based upon the old indictment for violation of section 5444. This requisition Canada honored and delivered Browne to the proper officer, with whom he was travelling toward this city, when he was arrested on the railroad train under a warrant based upon the conspiracy conviction, taken away from the extradition officer who had him in charge, and lodged in Sing Sing, whence he has been brought under this writ alleging that his incarceration is in violation of the obligations of the United States under the Ashburton treaty of 1842, as extended by the abovementioned convention of 1889, and therefore in violation of the supreme law of the land.

The return to the writ shows no warrant for holding Browne in prison other than his regular commitment under the conspiracy conviction.

Counsel having discovered no instance later than Miller's case (23 Fed. Rep., 32) of the extradition of a convict upon an untried charge followed by imprisonment under his conviction.

Miller was before Judge Acheson in 1885, and governmental action substantially identical with that taken here was distinctly approved.

The celebrated case of Rauscher, 119 U. S., 407, was argued early in 1886, and the court does not advert to Judge Acheson's

17 ruling. This omission of so important an instance from so thorough a review of the whole subject of extradition can only have occurred because Miller's case was not reported in time for consideration.

It is now brought forward as justification for the manner of Browne's incarceration. Such claim can not be sustained, for Miller may have been, and Browne may be, lawfully detained, but not for the reasons advanced by Judge Acheson, whose whole opinion is based on the decisions carefully considered and decisively overruled in the Rauscher case.

The learned counsel for the Government remind the court that since 1885 no facts like the present have arisen for judicial consideration, and while admitting that the judgment in Rauscher's case has for twenty years rendered it unlawful to try a person surrendered in extradition for any offence committed prior to surrender other than that specified in the demand for extradition, assert:

1st. That upon the true construction of the Rauscher case it is lawful to apprehend an escaped convict even though at the time of apprehension he has been brought within this country solely by virtue of a demand in extradition wholly unconnected with the crime for which he became a convict; and

2nd. That such right to seize convicts is especially secured to our Government in its relations with the King of Great Britain and Ireland by the terms of the Ashburton treaty of 1842, as supplemented by the extradition convention of 1889—the latter instrument, be it noted, having come into existence since the Rauscher decision.

18 The arrest of Browne under the circumstances above recited certainly constitutes a vigorous assertion of this doctrine. Counsel have respectively laid stress upon the manner of Browne's flight to his Canadian asylum and the " trick " of getting him within the reach of the warrant now holding him in prison, upon the pretence of wanting him upon another charge.

These considerations, however, are all circumstances of inflammation, for neither the manner or time of Browne's escape nor the intent behind his enforced return are material to the present inquiry. They suggest subjects fit for diplomatic rather than for judicial consideration. The sole question here presented is not whether that which has been done is wrong or tricky or injudicious, but whether it is unlawful.

Concededly the facts submitted are very different from those considered in the case of Rauscher, but I can not concur in the narrow view of that famous decision now urged upon me. The Supreme Court there found great contrariety of opinion not only among judges, but diplomats, as to what might or might not be done to persons delivered upon demands in extradition; it had under especial consideration the Ashburton treaty, which on these points is entirely silent, and it must have been aware that the action of this court in the case of Lawrence (so elaborately considered in the Rauscher opinion) had resulted in a refusal to the part of Lord Derby to honor our demand for the surrender of one Winslow unless the United States would especially covenant to do nothing and permit nothing to be done to Winslow except try him for the offense for which

19 his surrender was requested, a position in which Secretary Fish found it inconsistent with the dignity of this country to acquiesce.

Such situation called for and received what I must regard as a declaration of principles by a coordinate branch of our Government and a chart in all matters of extradition, not grounded upon mere legality, but resting on foundations of national honor.

The sum of the doctrine declared is, in the language of the court, that—

"this right (of extradition), the right to demand it, the obligation to grant it, the proceedings under which it takes place, all show that it is for a limited and defined purpose that the transfer is made; it is impossible to conceive of the exercise of jurisdiction in such a case for any other purpose than that mentioned in the treaty, and ascertained by the proceedings under which the party is extradited, without an implication of fraud upon the rights of the party extradited and bad faith to the country which permitted his extradition. No such view of solemn public treaties between the great nations of the earth can be sustained by a tribunal called upon to give judicial construction to them."

Nor are decisions wanting in which the broadest significance has been given to the judgment containing these vigorous expressions.

In re Reinitz (39 Fed. Rep., 204) Judge Brown, of this district, discharged from custody a man arrested on civil process immediately after his acquittal of the charge of forgery, upon which he had been extradited, remarking that the case of Rauscher had definitely settled that an extradited person "can not be arrested or tried" for any offense committed prior to extradition other than that for which he had been surrendered.

In re Baruch (41 Fed. Rep., 472) the same distinguished jurist quoted the above extract from the Rauscher opinion and applied it to the case of one who had been haled from New Jersey to New York, in order that he might be extradited, and upon his discharge and before returning to New Jersey had been arrested in civil process for the same cause as that for which his extradition had been demanded. He further referred with approval to the opinion of Governor Hill of this State in the case of Hope (7 N. Y. Crim. Rep., 406), who, speaking of the Rauscher judgment, says:

"The true theory which now seems to be firmly established is that a State should not be allowed to obtain jurisdiction of the fugitive from justice and then to take advantage of jurisdiction thus obtained and to use it for another and a different purpose."

In Hall vs. Patterson (45 Fed. Rep., 352), the late Judge Green, of New Jersey, expressed his view of the Rauscher case by saying that after one delivered in extradition be tried and acquitted "he is entitled to have granted to him a reasonable time in which to leave the country before he can be arrested and held to answer for any other crime committed before extradition."

It is also to be remembered that the Rauscher judgment proceeds not only "upon the ground of a right given impliedly by the terms of the treaty between the United States and Great Britain" (although the Ashburton treaty is entirely silent on the subject), but also given "expressly by the acts of Congress in the case of a fugitive surrendered to the United States by a foreign nation." (Lascelles vs. Georgia, 148 U. S., at 542.)

The acts referred to are sections 5272 and 5275, Revised Statutes, and they remain to-day as they were in 1886, a "Congressional con-

struction" of extradition treaties (i. e., of all extradition
21 treaties) "binding upon the judiciary," such construction requiring that a person brought into this country upon extradition "shall not be arrested or tried for any other offence than that with which he was charged in extradition until he shall have had a reasonable time to return unmolested to the country from which he was brought." (U. S. vs. Rauscher, supra.)

It is idle to attempt distinctions between convicts and persons indicted, arrests on mesne process and final commitments, between civil and criminal proceedings. The Rauscher judgment, as well as subsequent interpretations thereof, fully warrant the doctrine approved by Sir Edward Clarke in his work on Extradition—that the person extradited can not be "detained" for any other than the extradition offence until he has had a reasonable opportunity to return to the delivering country.

It remains to consider the contention that the rule above set forth has been (as to Great Britain at all events) abrogated by the convention of 1889.

If it were not for sections 5272 and 5275, Revised Statutes, and the construction given thereto by the Supreme Court, the argument would have more weight; but it was distinctly held that these statutes alone were sufficient to uphold the doctrine of the Rauscher case, and Justice Gray gave his adherence thereto solely upon that construction.

Unless, therefore, the convention of 1889 has abrogated the statutes as well as superseded the doctrine based upon the right "implied" from the Ashburton treaty, the rule must remain the same.

Article 2d of this convention, after providing that no surrender shall take place if the offense in respect to which surrender is
22 demanded "be one of a political character," declares that no person surrendered by either of the high contracting parties to the other shall be triable or tried or be punished for any political crime or offence or for any act connected therewith, previously to his extradition."

Article 3d declares that "no person surrendered by or to either of the high contracting parties shall be triable or tried for any crime or offence committed prior to his extradition other than the offence for which he was surrendered until he shall have had an opportunity of returning to the country from which he was surrendered."

Article 7th declares that "the provisions of the said 10th article (i. e., of the Ashburton treaty) and of this convention shall apply to persons convicted of the crimes therein respectively named and specified whose sentence therefor shall not have been executed."

It is strenuously contended that the omission of the word "punished" from article 3d above quoted leaves the United States free to punish by imprisonment a convict found within its borders, even if at the time of his apprehension he is within the country solely under a warrant in extradition.

But these treaty provisions are primarily the obligations of the contracting Governments each to the other. They do not purport to repeal or modify any law of the United States, and they are not

inconsistent with the continued enforcement of sections 5272 and 5275, Revised Statutes, which constitute a rule of conduct obligatory upon the officers of the United States whose conduct is here questioned.

23 It is, of course, true that a statute inconsistent with a treaty is repealed by implication. It is too clear for argument that there is no such implication in this instance.

I am therefore of opinion that without further interpreting the language of the convention the governmental contention is untenable in the light of the above referred to sections of the Revised Statutes as still authoritatively interpreted by the case of Rauscher.

It is doubtless true that the insertion of the word "punished" in article 3 of the convention would have rendered that instrument clearer, and the argument is not without force that its omission is notable in view of its presence in many other extradition treaties negotiated with other nations at or about the same time. As, however, I regard the general doctrine laid down in the case of Rauscher, as based upon existing statutes of the United States, to be entirely conclusive of this matter, I need not pursue the consideration of the convention of 1889 further than to say that it appears to me very doubtful, in view of the provisions of article 7, that article 3 should be so construed as to permit either of the contracting parties to do so by indirection under that article what neither could do openly under article 7, and that I consider the insertion of the word "punished" in article 2 as more than a recognition of the historical fact that political offences are frequently punished without trial.

I have given this cause consideration proportioned rather to its importance than its apparent difficulty, and conclude that in my opinion, as long as the present Federal statutes on the sub-

24 ject remain in force unrepealed either by Congress or the express language of a treaty, there is no authority of or within these United States having any right or power to seize, arrest, confine, or detain any person extradited in pursuance of treaty provisions and for a specific offence for any other offence, crime, or cause whatsoever (committed or existing before his extradition) except for that specific offence, crime, or cause by reason of which the extradition has been granted; and further, that this doctrine rests not only nor principally upon the civil rights or personal privileges of a fugitive criminal who has been returned in accordance with an increasingly civilized international law, but upon the highest grounds of national honor, imposing upon this Government and upon all persons subject to its rule the obligation to deal with the human being entrusted to them by a friendly foreign power only with respect of the matter by reason of which he was so entrusted.

Let the relator be discharged.

Aug. 14, 1906.

C. M. Hough, *D. J.*

(Endorsed:) U. S. Circuit Court, Southern District of New York. In the matter of Chas. C. Browne. Opinion. U. S. Circuit Court, Southern District New York. Filed Aug. 14, 1906. John A. Shields, clerk.

25 At a stated session of the Circuit Court of the United States for the Southern District of New York, held at the United States court-house and post-office building in the city of New York on the 14th day of August, 1906.

Present: Hon. Charles M. Hough, judge.

In the matter of the Petition of Charles C. Browne for a writ of habeas corpus.

Whereas a writ of habeas corpus has been heretofore issued on the application of Charles C. Browne, directed to Addison Johnson, agent and warden of the State prison of the State of New York, commanding him to bring up the body of Charles C. Browne for the purpose of inquiring into the cause of his detention, and the said prisoner having been brought before me and an examination had, and it appearing on such examination that the said Charles C. Browne is unlawfully imprisoned and restrained of his liberty,

Now, after hearing William M. K. Olcott, esq., on behalf of the prisoner, and Henry L. Stimson and W. Wickham Smith, esqs., opposed, it is therefore finally

Ordered, that the said Charles C. Browne be, and he hereby is, forthwith discharged from the custody of the said Addison Johnson as agent and warden of the State prison of the State of New York.

C. M. Hough, *D. J.*

Approved as to form.

H. L. Stimson, *U. S. Atty.*

26 (Endorsed:) U. S. Circuit Court. In the matter of the petition of Charles C. Browne for a writ of habeas corpus. Order. Black, Olcott, Gruber & Bonynge, attorneys for petitioner, 170 Broadway, New York City. U. S. Circuit Court, Southern District New York. Filed Aug. 14, 1906. John A. Shields, clerk.

27 Circuit Court of the United States for the Southern District of New York.

Addison Johnson, warden of the State prison of the State of New York, at Sing Sing, N. Y.,
vs.
Charles C. Browne, petitioner.

The above-named Addison Johnson, agent and warden of the State prison of the State of New York, at Sing Sing, N. Y., feeling aggrieved by the order of the Circuit Court of the United States for the Southern District of New York, entered herein on the 14th day of August, 1906, discharging the above-named Charles C. Browne, the peti-

tioner, from the custody of said Addison Johnson, as agent and warden of the State prison of the State of New York at Sing Sing, N. Y., hereby applies for the allowance of an appeal to the Supreme Court of the United States.

Dated New York, October 19th, 1906.

HENRY L. STIMSON,
U. S. Attorney for the Southern District of New York.

The foregoing appeal is hereby allowed.

Dated New York, October 19th, 1906.

C. M. HOUGH,
U. S. District Judge, Holding U. S. Circuit Court.

(Endorsed:) Circuit Court of the United States for the Southern District of New York. Addison Johnson, warden of the State prison of the State of New York at Sing Sing, N. Y., vs. Charles C.
28 Browne, petitioner. Petition & allowance of appeal. Henry L. Stimson, U. S. attorney for the Southern District of New York, on behalf of Addison Johnson, warden, &c., No. 50 P. O. building, Borough of Manhattan, N. Y. City. Copy of the within is hereby admitted, N. Y., Oct. 19, 1906, Black, Olcott, Gruber & Bonynge, attys. for petitioner. U. S. Circuit Court, Southern District New York. Filed Oct. 19, 1906. John A. Shields, clerk.

29 Circuit Court of the United States for the Southern District of New York.

ADDISON JOHNSON, WARDEN OF THE STATE prison of the State of New York, at Sing Sing, N. Y.,
vs.
CHARLES C. BROWNE, PETITIONER.

And now comes Addison Johnson, appellant, and assigns as error:

1. That the Circuit Court discharged petitioner herein from the custody of appellant on the ground that his detention was in violation of the treaty of extradition between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland concluded July 12th, 1889.

2. That the said court did not remand the said petitioner to the custody of appellant to execute the sentence of the United States Circuit Court for the Southern District of New York pronounced on said petitioner on the 11th day of March, 1904.

Dated New York, October 19th, 1906.

HENRY L. STIMSON,
U. S. Attorney, for Appellant,
No. 50 P. O. Building, Borough of Manhattan, N. Y. City.

(Endorsed:) Circuit Court of the United States for the Southern District of New York. Addison Johnson, warden of the State prison of the State of New York at Sing Sing, N. Y., vs. Charles C. Browne, petitioner. Assignment of errors. Henry L. Stimson, U. S.

attorney, for appellant, No. 50 P. O. building, N. Y. City. Copy of the within is hereby admitted, N. Y., Oct. 19, 1906. Black, Olcott, Gruber & Bonynge, atty'. for petitioner. U. S. Circuit Court, Southern District New York. Filed Oct. 19, 1906. John A. Shields, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Charles C. Browne, petitioner:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at the city of Washington, on the 16th day of November, 1906, pursuant to an appeal, on the part of Addison Johnson, warden of the State prison of the State of New York at Sing Sing, N. Y., filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York in a certain suit or proceeding entitled "Addison Johnson, warden of the State prison of the State of New York at Sing Sing, N. Y., vs. Charles C. Browne, petitioner," to show cause, if any there be, why the decision of the United States Circuit Court in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 19th day of October, 1906.

C. M. HOUGH,
U. S. District Judge, Holding U. S. Circuit Court.

HENRY L. STIMSON,
U. S. Attorney, on Behalf of Addison Johnson, Warden of the State Prison of the State of New York at Sing Sing, N. Y., Appellant.

(Endorsed:) United States Supreme Court. Addison Johnson, warden of the State prison of the State of New York at Sing Sing, N. Y., vs. Charles C. Browne, petitioner. Citation. Henry L. Stimson, U. S. attorney, on behalf of Addison Johnson, warden, &c.,
31 No. 50 P. O. building, Borough of Manhattan, N. Y. City. Service of a copy of the within citation is hereby admitted. Dated New York, October 19th, 1906. Black, Olcott, Gruber & Bonynge, attys. for petitioner. U. S. Circuit Court, Southern District New York. Filed Oct. 19, 1906. John A. Shields, clerk.

32 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to thirty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled "Addison Johnson, warden of the State prison of the State of New

York at Sing Sing, N. Y., against Charles C. Browne, petitioner," as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 31st day of October, in the year of our Lord one thousand nine hundred and six and of the independence of the said United States the one hundred and thirty-first.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) United States Supreme Court. Addison Johnson, warden of the State prison of New York at Sing Sing, N. Y., vs. Charles C. Browne, petitioner. Transcript of record from the Circuit Court of the United States for the Southern District of New York.

33 (Indorsement on cover:) File No. 20446. S. New York, C. C. U. S. Term No., 481. Addison Johnson, agent and warden of the State prison of the State of New York at Sing Sing, N. Y., appellant, vs. Charles C. Browne. Filed November 2d, 1906. File No. 20446.